IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:4.8.2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

Crl.A. No.884 of 1999

Raja ... Appellant

Versus

State rep. by the
Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai-600 021. ... Respondent

Appeal suit filed under Section 374 Cr.P.C. against the order of conviction and sentence of 4 years of rigorous imprisonment for the offence under Section 307 I.P.C. passed in S.C.No.17 of 1999 dated 12.10.1999 on the file of the I Additional Sessions Judge, Chennai and to set aside the order of conviction.

For Appellant : Mr.Shanmuga Velayutham
For Respondent : Mr.N.Kumanan,
Govt. Advocate (Crl.Side).

JUDGEMENT

This appeal is preferred against the order of conviction convicting the appellant to undergo four years rigorous imprisonment for the offence under Section 307 I.P.C.

2.Brief facts of the case are as follows:

In connection with Crime No.713 of 1998 on the file of H3, Tondiarpet Police Station on 23.9.1998 at 7.30 P.M. P.W.1 and P.W.2 along with other constables went in search of the accused. At Avadana Ramaswamy Street Junction, they found the accused and tried to secure him. Immediately the accused took a knife from his waist, threatened them not to come closer him because he is a very bad person and aimed to attack P.W.1. When P.W.1 warded off with his right hand the blow fell on his right forearm and

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caused blood injury. P.W.2 hit the knife by his lathi and the knife fell down. Immediately the accused rushed to a petty shop,took soda and cool-drinks bottles and hurled the same on the road. The shop keepers closed their shops. Men and women who are waiting in the bus stops ran to save their life. The traffic was dislocated. When the police party tried to catch hold the accused he showed the broken soda bottle and threatened with dire consequence.

3.However P.W.1 along with his party caught hold the accused, took the knife from the road and produced before the Sub-Inspector of Police along with the complaint. The Sub-Inspector of police received the complaint from P.W.1 and registered a case against the accused in Crime No.113 of 1998. P.W.1 was sent for treatment in Stanley Hospital. P.W.4 doctor who examined him found an incised wound 7 cm in length in the right forearm as seen from Ex.P2 accident register. P.W.6 investigated the case and filed final report against the accused under Sections 307,336,437,341 and 506(2) I.P.C.

4.On behalf of the prosecution P.W.1 to P.W.6 were examined and Ex.P1 to Ex.P6 were marked and also M.O.1 and M.O.2 were marked. On behalf of the accused no witness was examined and no document was filed.

5.When the accused was questioned with regard to incriminating circumstance appearing in the evidence of the prosecution witnesses, he denied the same as false.

6.Upon perusing both oral and documentary evidences, the learned I Additional Sessions Judge,Chennai held that the offence against the accused are proved and convicted him for the offence under Section 307 and 506(ii) I.P.C. and sentenced him to undergo imprisonment for four years for the offence committed under Section 307 I.P.C. and to undergo one year rigorous imprisonment for the offence under Section 506(ii) I.P.C. Against such conviction, the accused preferred this appeal.

7.Mr.Shanmugavelayutham, learned counsel appearing for the accused would contend that this case was falsely registered only as a ground case to detain the accused under the Goondas Act (Act 14 of 1982) and submit that as a routine manner under Section 307 I.P.C the case was registered against the accused and if P.W.1 is examined to find out the injury sustained by him truth will come out.

8.Therefore on instruction, the learned Government Advocate produced P.W.1, Ananthaperumal and he was asked to show the injury on the right hand said to have been sustained by him. There is no scar on the right hand of P.W.1. When P.W.1 was questioned in this regard P.W.1 admitted

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that the case was falsely registered against the accused and that he did not sustain any injury. It is anybody's common sense that any incised wound will always leave a scar and the scar could be seen during the entire life of the injured.

9.A perusal of the accident register in Ex.P2, would show that the Doctor had mentioned the injury sustained by P.W.1 as an incisted wound of 7 c.m. over the right forearm but the breadth and depth of the injury has not been mentioned. It has simply stated the length of injury and not stated the position of wound whether horizontal or vertical. P.W.1 before this Court said that he did not sustain injury and his statement reveals that P.W.4 has issued false certificate to the police. The said conduct of P.W.4 is highly prejudiced.

10.The practice of foisting a ground case under Section 307 and Section 506(ii), 336 and 427 IPC against persons whom police want to detain under the Act 14 of 1982 is very common in this State. Unfortunately, the doctors also collude with the police by giving false wound certificates. It takes several months for the release of the detenu after filing of a Habeaus Corpus Petition. That is why, to prevent the accused from being enlarged on bail, police foist cases of this nature to invoke the goondas Act.

11.According to the learned counsel for the appellant even during the cross-examination of P.W.1 and P.W.2 it was suggested that the accused was arrested even on 19.9.1998 but he was really shown arrest on 23.9.1998. On a false complaint given by P.W.1 the case was registered only for the purpose of detaining the accused under goondas Act. Ulterior motive for filing this case has been amply proved. The conviction against the accused under Section 307 and 506(ii) is set aside. The accused is set at liberty.

12.The Registry is directed to send a copy of the judgement to the Director of Medical Education to take suitable disciplinary proceedings against P.W.4,Dr.Alagappan who was working in Stanley Hospital on 23.9.1998 for having issued the false accident register and report the same to this court after enquiry within a period of two months from the date of receipt of a copy of this order.

13.The Director General of Police is directed to take necessary action against P.W.1, Anandaperumal, Head Constable who gave false complaint against the accused, P.W.2,Sridhar, Grade I Police constable, who deposed falsely, P.W.5,Anbu Selvam, Sub Inspector of Police who registered the F.I.R. and P.W.6,Naveen Chandra Nagesh, Inspector of Police who investigated and filed charge sheet against the accused, who were working during the year 1998 at H3 Tondiarpet Police Station,Madras and report this court about the action taken against them within a period of two months.

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14.A copy of the Judgement shall be sent to the Director General of Police and the Director of Medical Education to take suitable action against the above persons.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The I Additional Sessions Judge, Chennai

2. -Do-thro' The Principal Sessions Judge, Chennai

3.The Director General of Police, Chennai

4.The Director of Medical Education.

5.The Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai-600 021.

6. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.S.Shanmugavelayutham, Advocate, SR.34744.

Crl.A. No.884 of 1999

VC(CO)
RVL 23.08.2006

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